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EX PARTE OR LATE FILED

January 14, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

NOTICE OF EX PARTE PRESENTATION

RECEIVED

JAN 14 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-128

Dear Ms. Salas:

On January 13, 1999, Albert Kramer of this law firm and Nicholas Allard of Latham & Watkins, representing APCC, met with Tom Power, Legal Advisor to Chairman Kennard.

They discussed generally the views stated in APCC's Comments, filed July 13, 1998, and Reply Comments, filed July 27, 1998, and record submissions of other parties. The points discussed are described in the attached materials.

Sincerely yours,

Robert F. Aldrich

RFA/nw
Enclosures
cc: Tom Power

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I. FAIR DIAL-AROUND COMPENSATION IS CRITICAL TO "WIDESPREAD DEPLOYMENT OF PAYPHONE SERVICES"

- The 1996 Act mandates fair payphone compensation to promote competition and widespread deployment of payphone services
- Under any reasonable method, the compensation rate should be no lower than 28.4 cents per call. Any reduction will have a devastating impact on payphone deployment.
- The traditional payphone revenue base – 0+ and coin traffic - is shrinking
- *Only* dial-around traffic is growing – clear evidence that dial-around traffic is underpriced
    - In market survey, dial-around calls currently represent 27% of payphone calls
    - For other payphone providers, the percentage is much more
- At the current dial-around rate of 28.4 cents per call, reduced from the original 35 cents, many installed payphones cannot recover costs. At a rate lower than 28.4 cents, even more payphones would have to be removed.
- To best promote competition and widespread deployment of high-quality payphones, the FCC should return the compensation rate to the 35-cent range

II. IF USED, COST-OF-SERVICE RATEMAKING MUST BE IMPLEMENTED IN HARMONY WITH THE STATUTORY PURPOSE

- There are major risks associated with a cost-of-service approach
  - fixed costs make up the bulk of payphone costs – but costs must be recovered based on usage
  - setting dial-around compensation based on average costs will cause removal of payphones with below-average call volumes
  - repeated use of an average cost approach will produce cycles of instability, progressively fewer payphones, and lower quality payphone service
- The rate set by the Commission will determine the number of payphones deployed and the quality of service provided
  - Setting the dial-around rate "too high" will, in the "worst" outcome, encourage more payphones, spurring healthier competition both within the industry and with wireless alternatives
  - Setting the compensation rate too low will cause deterioration of service to consumers. With a dwindling supply of payphones, market forces will encourage higher rates and diversion of even more traffic to wireless
  - The FCC must set the rate so that the "marginal" payphone recovers its costs

III. THE COMMISSION MUST CORRECT THE ALLOCATION OF COSTS TO DIAL-AROUND CALLS

- A fair share of coin mechanism capital costs should be allocated to the dial-around rate
  - Coinless payphones cannot be supported except in specialized locations
  - The coin mechanism is a fixed cost that must be paid if the payphone is installed at all
  - All fixed costs – including the coin mechanism - should be allocated among all calls
- The cost of dial-around collection and uncollectibles should be included in the dial-around compensation rate
  - Collection costs are real costs that PSPs are incurring and must recover
  - Based on experience with TOCSIA and interim compensation, APCC demonstrated collection costs and uncollectibles of 4.3 cents per call
  - PSPs must check per-call tracking – carrier tracking alone is not producing accurate payments. PSPs must pay to obtain tracking services from LECs
  - PSPs must collect payments from 100s of carriers. MCI is not making payment on 30% of its dial-around traffic, claiming the traffic is routed to switch-based resellers. Other carriers may follow suit.
  - Small carriers have little incentive to track or pay – most simply ignore requests for payment. Less than 10% of carriers (less than 40 out of 400) have rendered payment. PSPs face a Hobson's choice: either a huge percentage of uncollectibles or huge collection costs

IV. THE COMMISSION SHOULD LAY THE GROUNDWORK TO QUICKLY TRANSITION TO A MARKET-BASED RATE

- The court of appeals expressly recognized that in a competitive market, a market-based rate could satisfy the fair compensation requirement

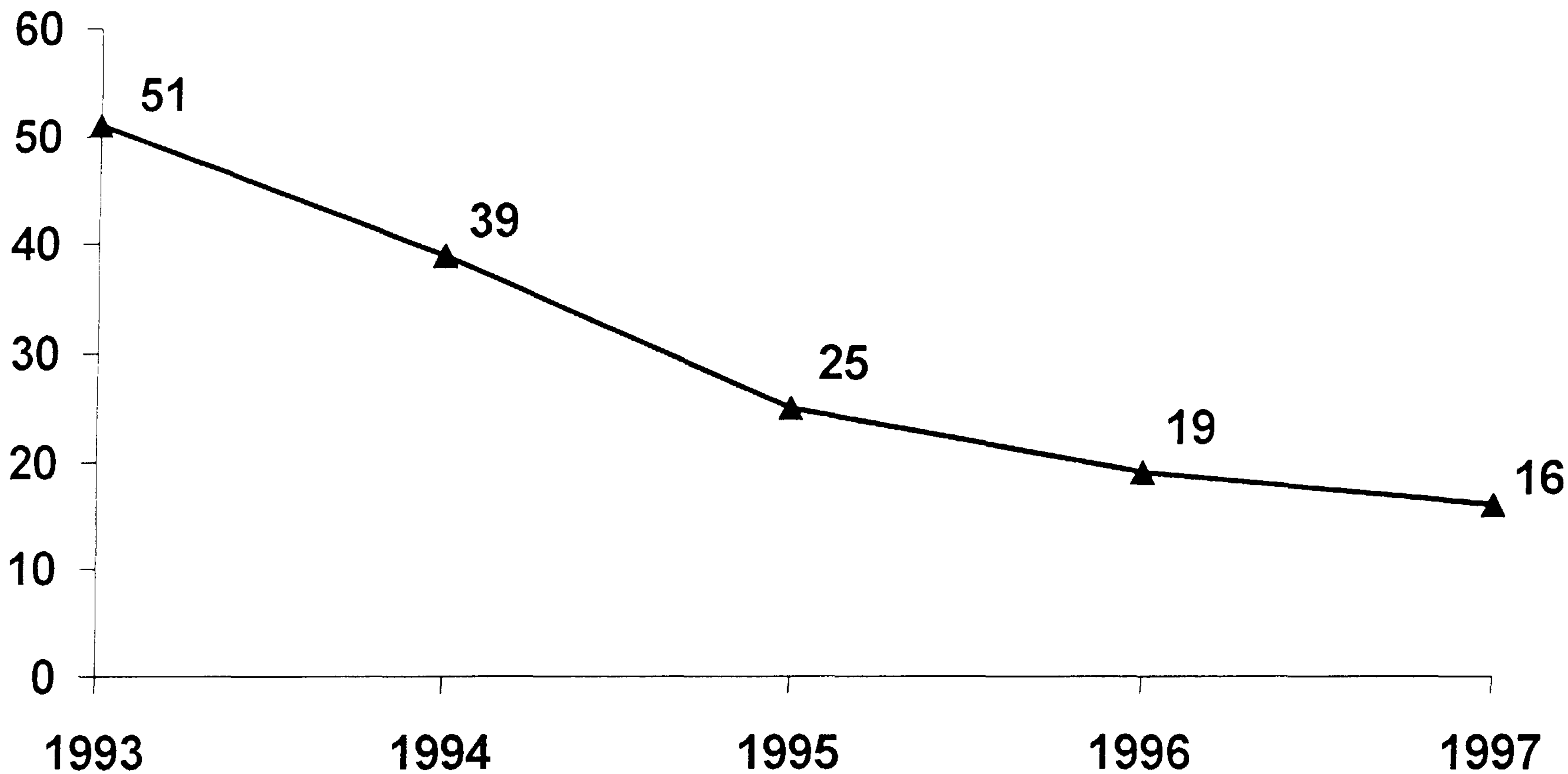
- The record establishes that the payphone market is effectively competitive

- A market-based rate such as the local coin rate is a valid indicator of costs
  - The same equipment, with the same fixed costs, is used for local coin calls and dial-around calls
  - a market-based rate automatically tracks market changes that affect per-call costs – e.g., changes in the number of payphones, number of calls per payphone, and fixed costs per call
  - regulators need only adjust the local coin rate for variable "avoidable" costs, which are relatively easy to estimate

- A market-based rate lets the market determine how many payphones are deployed
  - A market-based rate will correct itself because the dial-around rate is tied to the market-based local coin rate

Dramatic Decline in "0+" Calling From Payphones

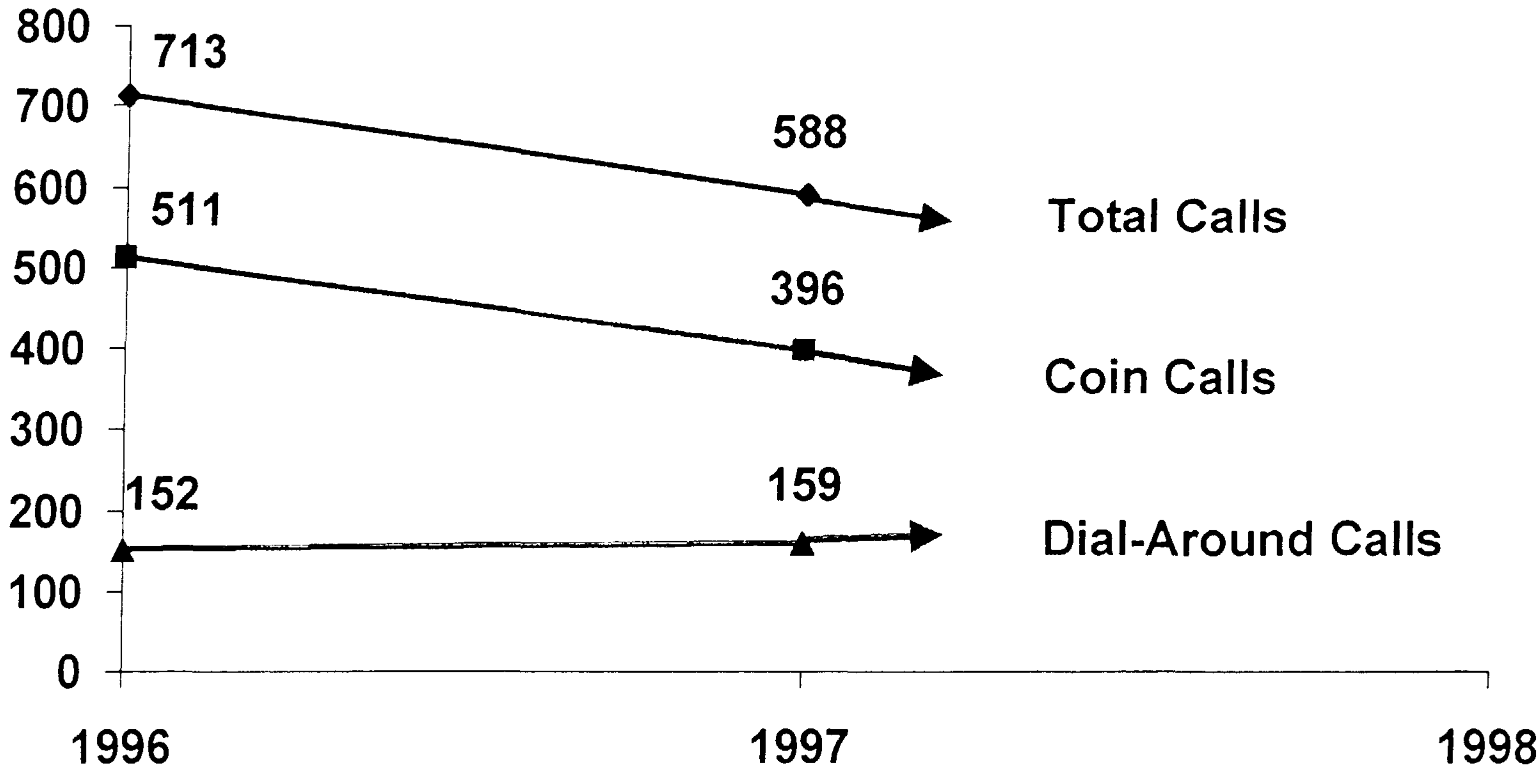
(Calls Per Payphone Per Month)



Source: Frost & Sullivan

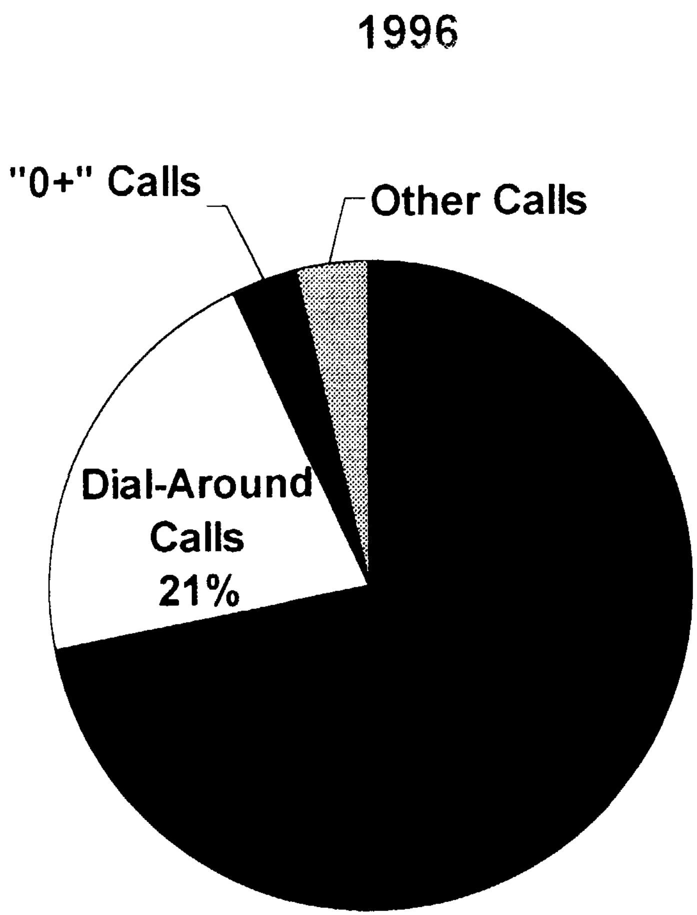
Recent Trend of Independent Payphone Traffic

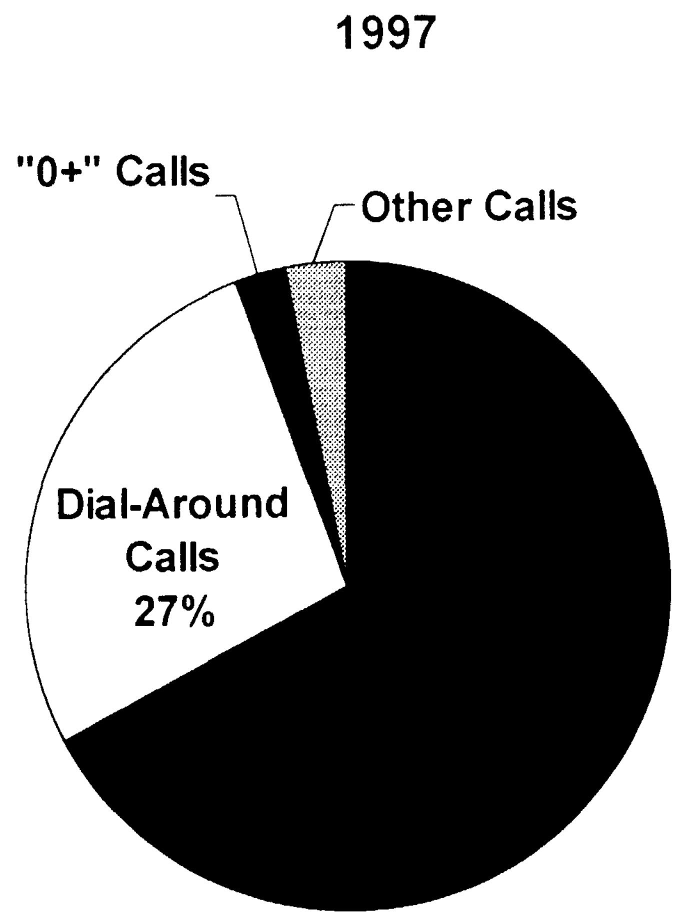
(Calls Per Payphone Per Month)



Source: APCC Independent Payphone Survey

Composition of Independent Payphone Traffic





Source: APCC Independent Payphone Survey